UNITED
NATIONS

A

General Assembly

Distr.
LIMITED

A/CN.4/L.551
16 July 1997

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Forty-ninth session
Geneva, 12 May-18 July 1997

REPORT OF THE PLANNING GROUP

Programme, procedures and working methods of the Commission and its documentation

1. At its 2474th meeting, on 12 May, the Commission established a Planning Group for the current session. 1/ It had before it Section E of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its fifty-first session entitled "General conclusions and recommendations" (A/CN.4/479).

2. The Planning Group adopted its report on 15 July 1997.

Planning of the current session's work

3. It was noted that, currently, substantive work had already been undertaken on the following topics: nationality in relation to the succession of States, reservations to treaties, State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law. According to paragraph 13 of General Assembly resolution 51/160, the Commission was invited further to examine the topics "Diplomatic protection" and "Unilateral acts of States", and to indicate the scope and the content of the topics in the light of the comments and observations made during the debate in the Sixth Committee and any written comments that Governments may wish to submit.

1/ The Group was composed of Mr. J. Baena Soares (Chairman), Mr. M. Bennouna, Mr. J. Crawford, Mr. L. Ferrari Bravo, Mr. R. Goco, Mr. Q. He, Mr. J. Illueca, Mr. J. Kateka, Mr. I. Lukashuk, Mr. V. Mikulka, Mr. D. Opertti-Badan, Mr. G. Pambou-Tchivounda, Mr. A. Pellet, Mr. B. Sepúlveda, Mr. B. Simma, Mr. D. Thiam and Mr. Z. Galicki (ex-officio).

4. At its first meeting, the Group recommended that the Commission should endeavour to complete its first reading of the draft articles on the topic "Nationality in relation to the succession of States" at its present session.

5. At its first meeting, the Planning Group considered also desirable that work plans and detailed outlines be prepared by the respective working group on the topic of diplomatic protection and of unilateral acts of States.

Work programme of the Commission for the quinquennium

6. The Planning Group found it useful for the Commission to plan its work for the ensuing five years and to prepare a work programme setting out in general terms the goals with respect to each topic concerned to be achieved during the quinquennium. It was, however, noted that such programme should allow sufficient flexibility. The Planning Group considered that, during the quinquennium, substantial progress should be made on those topics on which substantive work had already been undertaken, and that it would be desirable to complete, as the case may be, the first or the second reading of those topics within the present quinquennium. The Working Groups on the respective topics were thus invited to consider this matter and to make recommendations for the consideration of the Planning Group. The Planning Group endorsed their recommendations which are reproduced in the respective Chapter on the topic concerned. A year-by-year listing of the plan is attached (see Annex).

Methods of work

7. Various aspects of the current methods of work were commented upon. It was suggested, inter alia, that debates in the Commission on the draft articles during the various stages of consideration (e.g. in the Plenary and the Drafting Committee) should be conducted in such a way so as to avoid repetition and re-opening of issues already considered.

8. It was suggested that the currently fixed sequence by geographical region of the rotation system of the chairmanship should be adjusted so as to provide the flexibility that each region could have an opportunity to assume the chairmanship at a different year of the quinquennia. There was general support to this suggestion; a way should, however, be found to adjust the practice.

9. To enhance efficient organization of the work of the Commission, it was suggested that the membership (for the following session) of the Bureau or, at least, the Chairman, should be generally agreed upon at the end of a session rather than at the beginning of a session as has been the case.

Split session for 1998

10. The Planning Group discussed the question of a split session for 1998 as an experiment in the light of the factors outlined in paragraphs 228-233 of the 1996 Report of the Commission.

11. In considering a split session for 1998 as an experiment, it was recognized that the choice of dates was very much circumscribed by such external factors as availability of conference services, the holding of a

Diplomatic Conference on the Establishment of an International Criminal Court (between mid-June and July in 1998), and financial constraints under which the United Nations is operating. Due to such difficulties, the only dates available in 1998 were as follows: 20 April to 12 June in Geneva; 27 July to 14 August in New York. There was a preference that the second part of its session should also be held in Geneva; it was, however, noted that the services for summary records would not be available in August in Geneva. The Group expressed regrets about this lack of flexibility and suggested that the 1998 "experiment" could, therefore, not be made under the best conditions.

12. Recognizing that the 1998 split session would be an experiment and that its value could only be assessed after the session had been held, the Group considered that appropriate arrangements should, however, be made by the Secretariat so as not to prejudge the outcome of the experiment.

Duration of the Commission's future sessions

13. The Planning Group considered also the length of its future sessions. It was noted that the 10-week session in 1997 was of "an exceptional measure" taken by the Commission having in mind, inter alia, the financial difficulties under which the United Nations was operating in 1997. 2/ Having due regard to the Commission's work programme planner for the quinquennium and complexity of the topics under consideration, the Planning Group recommends that the Commission should have an 11-week session in 1998 and a 12-week session in 1999. The Secretariat was asked to transmit this position to the competent organs concerned.

Long-term programme of work: programme beyond the current quinquennium

14. The Planning Group established a Working Group to consider topics which may be taken up by the Commission beyond the present quinquennium. The Working Group on Long-Term Programmes of Work submitted its report (ILC(XLIX)/WG/LTPW/4), which was endorsed by the Planning Group. The Working Group recommended that the selection of topics for the long-term programmes should be guided by the following criteria which were identified by the Group: that the topic should reflect the requirements of States in respect of the progressive development and codification of international law; that the topic is sufficiently advanced in stage in terms of State practice to permit progressive development and codification; that the topic is concrete and feasible for progressive development and codification. In this regard, in the selection of new topics, the Commission should not restrict itself to traditional topics, but could also consider those that reflect new developments in international law and pressing concerns of the international community as a whole. On this basis, the selection of topics would then be made at the Commission's fiftieth session. A process for the selection of topics within the Commission was outlined. 3/ The selected topics will then be presented to the General Assembly at its fifty-third session in 1998 with

---

2/ See Official Records of the Fifty-first Session, Supplement No. 10 (A/51/10), para. 250. The session being the first of the quinquennium, which caused a lighter agenda than usual, was also a consideration.

3/ See document ILC(XLIX)/WG/LTPW/4.

an indication of how the Commission intends to proceed with the study of each topic. The role of the General Assembly in the selection of topics was stressed.

Celebration of the fiftieth anniversary of the Commission in 1998

15. The Planning Group took note with appreciation of the General Assembly's decision to organize a colloquium on the progressive development and codification of international law to be held in New York this autumn. The Group also noted with appreciation the offer of the Swiss Government and the Graduate Institute of International Studies (Geneva) to collaborate with the Commission in organizing a seminar in 1998 to celebrate the fiftieth anniversary of the Commission. The Group recommends that the seminar takes place on 22 and 23 April 1998. Members of the Commission were encouraged to submit their suggestions on the themes and formats of the seminar. An informal discussion was held with members of the Graduate Institute. It was suggested that the theme of the seminar should be: critical evaluation of the work of the Commission and lessons learned for the future role of the Commission. Enhancing the Commission's contribution to the progressive development and codification of international law should be the goal of the seminar. A detailed plan should be developed on this basis.

Cooperation with other bodies

16. The Planning Group took note of the recommendations in this regard contained in the Commission's 1996 report (paras. 239-241) and considered useful to take steps to implement those recommendations. During the discussion, reference was made to the Commission's Statute which envisaged that it could conduct a range of relationships with other bodies both within and without the United Nations system. Such relationships include not only dispatching questionnaires and considering "proposals and draft multilateral conventions" submitted to the Commission from the other bodies (Art. 17 of the ILC Statute), but also conducting consultations with United Nations organs "on any subject which is within the competence of that organ", and with any other organizations, intergovernmental or otherwise, national or international, on any subject entrusted to it (Arts. 25 (1) and 26 (1) of the ILC Statute). It was suggested that consideration should be given to establishing such relationships. It was noted that the establishment of such relationships should be selective, developed on a case-by-case basis, and should not be disproportionate to its principal activities of progressive development in codification of international law.

17. Reference was also made to Article 26 (2) of the ILC Statute by which the Secretary-General was requested to draw up a "list of national and international organizations concerned with questions of international law". The general view was that the list currently used for activities relevant to codification of international law should be reviewed; inactive organizations should be removed; institutions in the field of public international law: the Asian-African Legal Consultative Committee, the African Society of International Law, the Law Association for Asia and the Pacific, and other similar institutions in that field should be added to the list. Members were requested to give their comments on the list circulated. A new list should then be prepared for the purpose of distributing documents of the Commission.

Organization of the fiftieth session

18. It was suggested that, in principle, the first part of the session should be given to the discussion of the various reports (reservations, State responsibility, international liability, diplomatic protection, unilateral acts), whereas the second part should be used for the adoption of draft articles with commentaries (with regard to reservations, State responsibility and international liability) and of the report of the Commission. Taking into account the fact that there would not be any summary records in the first week (20-24 April) except for a first plenary meeting, the Planning Group suggested that this first week be given to working groups and to the two-day seminar for the celebration of the fiftieth anniversary.

Annex

Work programme (1998-2001)

1998:

Nationality in relation to the succession of States

Preparation of a questionnaire to be sent to States regarding the question of the nationality of legal persons in relation to the succession of States (to be discussed mainly in a small Working Group on the basis of the report of the Special Rapporteur).

Reservations to treaties

Two reports of the Special Rapporteur: the first report will deal with the definition, the formulation and withdrawal of reservations and the acceptances and objections to reservations. The second reeport will deal with effects of reservations, acceptances and objections to reservations.

State responsibility

First report of the Special Rapporteur dealing with Part One, review of the draft articles, (except Article 19: overview of issues relating to State crimes).

International Liability for injurious consequences arising out of acts not prohibited by international law

First report of the Special Rapporteur on "prevention of transboundary damage from hazardous activities".

Request for comments by Governments on "international liability" aspects of the topic.

Diplomatic Protection

First preliminary report of the Special Rapporteur on the basis of an outline proposed by the Working Group.

Unilateral acts of State

First report of the Special Rapporteur. In the preparation of that report, the Special Rapporteur might be assisted by a small consultative group of members of the Commission.

1999:

Nationality in relation to the succession of States

Possible completion of the second reading of the draft articles on nationality of natural persons in relation to the succession of States.

Reservations to treaties

Report of the Special Rapporteur on the status of reservations in the case of succession of States.

State responsibility

Second report of the Report of the Special Rapporteur on draft article 19 and on Part Two (except countermeasures).

International liability for injurious consequences arising out of acts not prohibited by international law

Possible completion of the first reading of the draft articles on "prevention of transboundary damage from hazardous activities".
[Work on "international liability" part of the topic depending on comments by Governments.]

Diplomatic protection

Second report of the Special Rapporteur.

Unilateral Act of States

Second report of the Special Rapporteur.

2000:

Nationality in relation to the succession of States

Further work depends on comments by Governments regarding nationality of legal persons.

Reservations to treaties

Report of the Special Rapporteur on dispute settlement linked to reservations.

Possible completion of the first reading of the guide to practice in respect of reservations.

State responsibility

Third report of the Special Rapporteur. (Countermeasures and an overview of issues relating to Part Three (settlement of disputes)).

Commission may establish a Working Group on settlement of disputes.

International Liability for injurious consequences arising out of acts not prohibited by international law

Comments by Governments on draft articles on "prevention".

Diplomatic protection

Third report of the Special Rapporteur.

Unilateral Act of States

Third report of the Special Rapporteur.

2001:

State responsibility

Fourth report of the Special Rapporteur (Part Three: any other outstanding issues).

Adoption of draft articles on second reading and commentaries thereto, and of the Commission's resolution on the draft articles.

Reservations to treaties

Completion of first reading of the draft articles.

Diplomatic Protection

Possible completion of the first reading of the topic.

Unilateral acts of States

Possible completion of work on the topic and submission of conclusions and recommendations to the Fifty-sixth session of the General Assembly.

International Liability for injurious consequences arising out of acts not prohibited by international law

Possible completion of second reading of draft articles on "prevention".